

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**CHERMANE SMITH, EDMANUEL
PEREZ, TYHESHA BRUNSTON,
MARIA VILLASEÑOR, LATOYA
SWANIGAN, individually, and MARK
EDWARDS and BERNICE DANIELS,
individually and on behalf of a class of
similarly situated persons,**

Plaintiffs,

vs.

**CITY OF CHICAGO, JODY WEIS,
Superintendent of Police, and ANITA
ALVAREZ, Cook County State's
Attorney,**

Defendants.

No. 06 C 6423

Judge Elaine E. Bucklo

**PLAINTIFFS' AGREED MOTION TO WITHDRAW MARK EDWARDS
AS A CLASS REPRESENTATIVE**

Plaintiffs, through their attorneys, hereby request pursuant to Rule 23 of the Federal Rules of Civil Procedure and agreement between the parties to withdraw Plaintiff Mark Edwards as a class representative of the injunctive class, while retaining Mr. Edwards as a Plaintiff and continuing to pursue his individual damages claim, in exchange for the State's Attorney's voluntary dismissal of her petition before the Seventh Circuit Court of Appeals for leave to appeal the Court's March 30, 2011 order certifying a Rule 23(b)(2) class with Mr. Edwards as a class representative. In support, Plaintiffs state as follows:

1. On July 12, 2011, the parties entered into an agreement whereby Plaintiffs agreed to withdraw Mr. Edwards as a named class representative while retaining Mr. Edwards as a Plaintiff in pursuit of his individual damages claim as stated in Plaintiff's Second Amended Complaint. (*See* Dist. Ct. Dkt. No. 192¹). In exchange, the Defendant Cook County State's Attorney agreed to dismiss her petition before the Seventh Circuit Court of Appeals for leave to appeal the Court's order certifying the Rule 23(b)(2) class in this case and finding Mr. Edwards to be an appropriate representative of the class. (*See* Dist. Ct. Dkt Nos. 176, 179; App. Dkt. No. 1.). The purpose of this Motion is to implement the agreement of the parties and streamline this litigation.

2. On March 30, 2011, this Court certified a Rule 23(b)(2) class of persons (a) who had, or will have, vehicles seized by Chicago police officers acting pursuant to the Illinois Drug Asset Forfeiture Procedure Act, 725 ILCS 150/1 *et. seq.*, ("DAFPA"); (b) whose vehicles are, or will be, held for forfeiture pursuant to the DAFPA; and (c) who were not or will not be afforded reasonably prompt, post-deprivation hearings before a neutral decision maker. (Dist. Ct. Dkt Nos. 69, 176). This Court also ruled that Mark Edwards may serve as a representative of the class. (Dist. Ct. Dkt. No. 176). On April 12, 2011, this Court denied State's Attorney's April 8, 2011 motion for reconsideration of this Court's March 30 Order certifying the injunctive class. (Dist. Ct Dkt. No. 179).

3. On April 26, 2011, the State's Attorney petitioned the Seventh Circuit for leave to appeal this Court's rulings of March 30, 2011 and April 12, 2011 on class certification. (App. Dkt. No. 1).

¹Plaintiffs cite to the record items in the District Court as "Dist. Ct. Dkt. No. _", and to items in the Appellate Docket in Case No. 11-8011 as "App. Dkt. No. _."

4. On July 7, 2011, this Court granted as unopposed Plaintiffs' motion of April 22, 2011 to add Ms. Daniels as an additional class representative of the certified injunctive class. (*See* Dist. Ct. Dkt. Nos. 180, 191). All parties acknowledge Ms. Daniels as an appropriate representative of the class.

5. Because Ms. Daniels remains an appropriate representative of the class, the withdrawal of Mr. Edwards as a class representative would prejudice neither the interests nor rights of any class member.

6. Pursuant to the parties' agreement, Mr. Edwards will remain a Plaintiff in pursuit of his individual damages claim as stated in Plaintiffs' Second Amended Complaint. (*See* Dist. Ct. Dkt. No. 192).

7. Should the Court grant this Motion, the State's Attorney will move to dismiss her petition to appeal class certification as moot, eliminating additional interlocutory appellate litigation and thereby promoting judicial economy.

CONCLUSION

WHEREFORE, Plaintiffs respectfully request that the Court grant Mark Edwards leave to withdraw as a class representative, while retaining Mr. Edwards as a Plaintiff in pursuit of damages claims, in exchange for the State's Attorney's voluntary dismissal of her petition before the Seventh Circuit Court of Appeals for leave to appeal the Court's Order of March to certify Mr. Edwards as a class representative.

Respectfully Submitted,

/s/ Craig B. Futterman

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